

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MISSOURI

In re

23ANDME HOLDING CO.<sup>1</sup>, *et al.*,

Debtors.

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Case No. 25-40976

Chapter 11

**RESPONSE BY THE STATE OF INDIANA TO THE CONSUMER  
PROTECTION OMBUDSMAN'S REPORT REGARDING  
THE PROPOSED SALE OF DEBTORS' BUSINESSES  
AND RELATED CONSUMER INFORMATION**

COMES NOW, the State of Indiana ("State"), by and through Counsel, and files this *Response to the Consumer Protection Ombudsman's Report<sup>2</sup> Regarding the Proposed Sale of Debtor's Businesses and Related Consumer Information*, and states as follows:

**I. OVERVIEW**

The Debtors' business is built upon the DNA of millions of consumers in America and throughout the world. The Debtors collect consumers' physical DNA samples ("Genetic Material") and analyze the Genetic Material to derive data ("Genetic Data") and create reports on consumers' ancestry, genetic characteristics, and probable genetic health risks. After the Debtors analyze Genetic Material, it may be stored by the Debtors or the Debtors' "biobank."<sup>3</sup> In addition to Genetic

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/23andMe>. The Debtors' service address for purposes of these chapter 11 cases is: 870 Market Street, Room 415, San Francisco, CA 94102.

<sup>2</sup> The CPO's Report was filed at Docket 718.

<sup>3</sup> *Biobanking Consent Document*, available at: <https://www.23andme.com/about/biobanking/> (last visited Mar. 24, 2025) ("This biobanking consent applies to any biological specimens (including

Material and Genetic Data, the Debtors collect and maintain consumers' self-reported health information, including disease conditions, family history, and other traits ("Self-Reported Health Information").<sup>4</sup> The Genetic Material, Genetic Data, and Self-Reported Health Information the Debtors collect and maintain may be used in medical research conducted by the Debtors or third parties.<sup>5</sup> Finally, the Debtors offer consumers online telehealth visits through their Lemonaid Health subsidiary, offer consumers prescriptions by mail through their Lemonaid Pharmacy subsidiary, and collect and store medical records for these consumers ("Medical Data").<sup>6</sup>

The Debtors are now seeking to sell all or substantially all of its assets.

Pursuant to the bidding procedures and sale motion, this includes consumer data.

Although Indiana is not filing a formal objection to the proposed sale, we wish to

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saliva, blood, microbiome, tissue samples, etc.) you provide to 23andMe in order to receive a 23andMe Service and/or as part of a 23andMe Research study.").

<sup>4</sup> *23andMe Privacy Statement*, available at: <https://www.23andme.com/legal/privacy/full-version/> (last updated Sep. 24, 2024) (last visited Mar. 24, 2025).

<sup>5</sup> *Research Consent Document*, available at: <https://www.23andme.com/about/consent/> (last visited Mar. 24, 2025) ("The purpose of 23andMe Research is to make new discoveries about genetics and other factors behind diseases and traits. . . . Some 23andMe Research is conducted in collaboration with third parties, such as non-profit organizations, pharmaceutical companies, or academic institutions. . . .").

<sup>6</sup> *Lemonaid Consent to Telehealth*, available at: <https://www.lemonaidhealth.com/legals/consent-to-telehealth> (last visited Mar. 24, 2025) ("Lemonaid Health is an online doctor's office. . . . Our medical team is made up of doctors and nurse practitioners. . . . We are an online doctor's office and not a pharmacy. If you request that your medicines be delivered to you in the mail, we'll arrange for Lemonaid Pharmacy LLC or an independent pharmacy to mail your medicines."); *Lemonaid Privacy Policy*, available at: <https://www.lemonaidhealth.com/legals/privacy-policy> (last updated Mar. 14, 2025) (last visited Mar. 24, 2025) (identifying "Information We Collect" as including "Health Information: information you provide to us or our Medical Team, including information we generate about you, related to your physical, mental or other health conditions."); *see also 23andMe Medical Record Privacy Notice*, available at: <https://www.23andme.com/legal/medical-record-privacy-notice/> (effective Sep. 24, 2024) (last visited Mar. 24, 2025) ("customers have an opportunity to participate in Telehealth Services coordinated through 23andMe and its service providers, subsidiaries, and affiliates, including Lemonaid Health, Inc. . . . This notice covers how your Medical Record Information is used, disclosed, and maintained").

respectfully clarify our position and request that certain consumer protection considerations be taken into consideration in the event the sale occurs.

## **II. THE DEBTORS HOLD MILLIONS OF CONSUMERS' HIGHLY SENSITIVE PHYSICAL GENETIC MATERIAL, GENETIC DATA, SELF-REPORTED HEALTH INFORMATION, MEDICAL DATA, AND OTHER DATA**

The Debtors' business model relies on the collection and storage of highly sensitive Genetic Material, Genetic Data, Self-Reported Health Information, and Medical Data, along with other types of sensitive consumer data. The Debtors collect a wide range of data types during their regular course of business, and the Debtors have amassed a trove of sensitive data on millions of Americans.<sup>7</sup> 23andMe discloses collecting the following types of personal information from consumers:

- **Registration Information:** information you provide during account registration or when purchasing the Services, such as a name, user ID, password, date of birth, billing address, shipping address, payment information (e.g., credit card), account authentication information, or contact information (e.g., email, phone number).
- **Genetic Information:** information regarding your genotype (e.g., the As, Ts, Cs, and Gs at particular locations in your DNA). Genetic Information includes the 23andMe genetic data and reports provided to you as part of our Services.
- **Sample Information:** information regarding any sample, such as a saliva sample, that you submit for processing to be analyzed to provide you with Genetic Information, laboratory values or other data provided through our Services.
- **Self-Reported Information:** information you provide to 23andMe including your gender, disease conditions, health-related

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<sup>7</sup> See, e.g., *23andMe Reports FY2023 Fourth Quarter and Full Year Financial Results* (May 25, 2023), <https://investors.23andme.com/news-releases/news-release-details/23andme-reports-fy2023-fourth-quarter-and-full-year-financial> ("We grew our customer base to over 14 million genotyped customers").

information, traits, ethnicity, family history, or anything else you provide to us within our Service(s).

- **Biometric information:** certain Self-Reported Information you provide to us or our service providers to verify your identity using biological characteristics.
- **User Content:** information, data, text, software, music, audio, photographs, graphics, video, messages, or other materials, other than Genetic Information and Self-Reported Information, generated by users of 23andMe Services and transmitted, whether publicly or privately, to or through 23andMe. For example, User Content includes comments posted on our Blog or messages you send through our Services.
- **Web-Behavior Information:** information on how you use our Services or about the way your devices use our Services is collected through log files, cookies, web beacons, and similar technologies (e.g., device information, device identifiers, IP address, browser type, location, domains, page views).<sup>8</sup>

Likewise, Lemonaid Health discloses collecting the following types of personal information from consumers:

- “Individual health conditions, treatment, diseases, or diagnosis; Social, psychological, behavioral, and medical interventions; Use or purchase of prescribed medication; Diagnoses or diagnostic testing, treatment, or medication; Reproductive or sexual health information”
- “Biometric data”
- “Genetic data”
- “[P]hotos you provide to us to verify your identity before beginning a virtual visit”
- “[A]ge (40 years or older), race, color, ancestry, national origin, citizenship, religion or creed, marital status, medical condition, physical or mental disability, sex (including gender, gender identity, gender expression, pregnancy or childbirth and related

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<sup>8</sup> *23andMe Privacy Statement*, available at: <https://www.23andme.com/legal/privacy/full-version/> (last updated Sep. 24, 2024) (last visited Mar. 24, 2025).

medical conditions), sexual orientation, veteran or military status, and genetic information (including familial genetic information)”

- “[D]ata that reveals your: social security, driver’s license, state identification card, or passport number; account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to your account; precise geolocation”<sup>9</sup>

It is Indiana’s understanding that all of the above was marketed and maybe sold as part of the proposed sale. As such, the Consumer Protection role of the State of Indiana is concerned with the proper protections. The bidding procedures do require that the potential buyers accept and comply with the privacy procedures in place with the Debtors at the time of bankruptcy filing. This promise is of the upmost importance to Indiana.

### **III. DEBTORS PROMISED THAT CONSUMERS’ SENSITIVE DATA WOULD BE PROTECTED AND CONSUMERS CAN CONTROL HOW THEIR DATA IS USED**

The Debtors have repeatedly promised consumers that their sensitive data is protected and that consumers control whether and how their data is used.

23andMe’s Privacy Statement assures customers “It’s your data” and explains that customers have the right to delete their account “at any time.”<sup>10</sup> Further, “Upon account deletion, we will automatically opt you out of Research and discard your sample.”<sup>11</sup> However, even if a customer does not wish to delete his or her account,

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<sup>9</sup> *Lemonaid Privacy Policy*, available at: <https://www.lemonaidhealth.com/legals/privacy-policy> (last updated Mar. 14, 2025) (last visited Mar. 24, 2025).

<sup>10</sup> *23andMe Privacy Statement*, available at: <https://www.23andme.com/legal/privacy/full-version/> (last updated Sep. 24, 2024) (last visited Mar. 24, 2025).

<sup>11</sup> *Id.*

the Privacy Statement provides that a customer's data will not be used for research purposes without the customer's prior consent. The Privacy Statement provides:

[T]aking part in 23andMe Research is completely voluntary. . . . If you are eligible to participate in Research, you choose whether to participate or not, and you can change your mind any time. Customers never need to participate in Research to use 23andMe. . . . We do not use your information for Research unless you explicitly choose to participate in Research.

23andMe's Research Consent Document makes similar representations:

**23andMe uses physical, technical, and administrative security measures to protect your information.** We regularly review and improve our privacy and security practices to help ensure the safety of your information. . . . Your participation in the 23andMe Research study is **completely voluntary**, so you may choose to not participate. If you change your mind about participating, you can **change your consent choice** in your Account Settings at any time. If you withdraw your consent, 23andMe will prevent your Research Information from being used in new 23andMe Research initiated after 30 days from when we receive your request from your Account Settings.<sup>12</sup>

Likewise, even if a customer does not wish to delete his or her account, 23andMe's Privacy Statement provides that a customer can opt-out of sample storage and choose to discard his or her Genetic Material sample.<sup>13</sup> 23andMe's Biobanking Consent Document similarly provides:

### **Participation Is Voluntary**

Taking part in our biobank is voluntary and entirely your choice. If you do not consent to have your Samples stored, it will not impact your ability to receive or participate in the 23andMe Service for which you submitted your Samples, and your Samples will be securely discarded after completion of the analysis for which it was submitted.

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<sup>12</sup> *Research Consent Document*, available at: <https://www.23andme.com/about/consent/> (last visited Mar. 24, 2025) (Emphasis in original).

<sup>13</sup> *23andMe Privacy Statement*, available at: <https://www.23andme.com/legal/privacy/full-version/> (last updated Sep. 24, 2024) (last visited Mar. 24, 2025).

## **Privacy**

All of the same protections, terms, and safeguards described in our Terms of Service and Privacy Statement will apply to the storage of your Samples and any information generated from our further analysis of your Samples. . . . 23andMe uses a range of physical, technical, and administrative procedures to protect the security and privacy of your Personal Information, including your Samples and the data generated from the analysis of your Samples.

## **Withdrawing Your Consent**

You may withdraw your consent to biobanking at any time via your account settings. . . . Once you withdraw your biobanking consent, 23andMe will securely discard your stored Samples within the legally applicable timeframe. Please note that if you delete your 23andMe account, your stored Samples will be securely destroyed.<sup>14</sup>

Significantly, 23andMe's Privacy Statement also tells customers that if the company is involved in a bankruptcy, reorganization, or asset sale, the Privacy Statement will apply to their personal information transferred to a new entity through such bankruptcy, reorganization, or asset sale.<sup>15</sup>

Finally, the current Lemonaid Privacy Policy states: "It's your data, you're in control. . . . You can delete your Lemonaid account and data at any time by contacting us at [privacy@lemonaid.com](mailto:privacy@lemonaid.com)."<sup>16</sup>

Again, Indiana is aware that the proposed buyers are stating that they will be adopting and complying with the privacy and customer agreements in place at

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<sup>14</sup> *Biobanking Consent Document*, available at: <https://www.23andme.com/about/biobanking/> (last visited Mar. 24, 2025).

<sup>15</sup> *23andMe Privacy Statement*, available at: <https://www.23andme.com/legal/privacy/full-version/> (last updated Sep. 24, 2024) (last visited Mar. 24, 2025) ("If we are involved in a bankruptcy, merger, acquisition, reorganization, or sale of assets, your Personal Information may be accessed, sold or transferred as part of that transaction and this Privacy Statement will apply to your Personal Information as transferred to the new entity.").

<sup>16</sup> *Lemonaid Privacy Policy*, available at: <https://www.lemonaidhealth.com/legals/privacy-policy> (last updated Mar. 14, 2025) (last visited Mar. 24, 2025).

the time of the bankruptcy. This promise by the buyers is highly important to Indiana.

### **III. THE DATA BREACH AND THE STATE'S INVESTIGATION**

On October 6, 2023, 23andMe released a blog post disclosing that customer data had been compiled and exfiltrated without authorization by a threat actor using compromised 23andMe user accounts.<sup>17</sup> 23andMe later admitted that the data breach started months earlier, in April of 2023, and that 23andMe failed to detect the incident for approximately five months.<sup>18</sup> After the breach, sensitive data stolen from 23andMe customers was posted on the dark web for sale, including targeted sales of the data of at least 1 million individuals with Ashkenazi Jewish heritage, as well as hundreds of thousands of individuals with Chinese ancestry.<sup>19</sup> This targeting raised significant privacy and personal safety concerns and demonstrates a real risk of harm to consumers when such data is not properly safeguarded. Similarly, in separate incident prior to the 2023 breach, a 23andMe API<sup>20</sup> was used to “block people from sites and apps based on their gender, ancestry and any genetic characteristic,” in what one reporter called “a race wall around the

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<sup>17</sup> *Addressing Data Security Concerns – Action Plan*, 23ANDME BLOG (last updated Dec. 5, 2023), <https://blog.23andme.com/articles/addressing-data-security-concerns>.

<sup>18</sup> *23andMe admits it didn't detect cyberattack for months*, TECH CRUNCH (Jan. 25, 2024), <https://techcrunch.com/2024/01/25/23andme-admits-it-didnt-detect-cyberattacks-for-months/>.

<sup>19</sup> *23andMe User Data Stolen in Targeted Attack on Ashkenazi Jews*, WIRED (Oct. 6, 2023) <https://www.wired.com/story/23andme-credential-stuffing-data-stolen/> (“Hackers posted an initial data sample on the platform BreachForums earlier this week, claiming that it contained 1 million data points exclusively about Ashkenazi Jews. There also seem to be hundreds of thousands of users of Chinese descent impacted by the leak.”).

<sup>20</sup> “An API, or application programming interface, is a set of rules or protocols that enables software applications to communicate with each other to exchange data, features and functionality.” *What is an API?*, IBM (Apr. 9, 2024), <https://www.ibm.com/think/topics/api>.



web”.<sup>21</sup> In short, the data is highly sensitive, and past events demonstrate significant potential for misuse.

Since late 2023, the State has been investigating the Debtors, particularly 23andMe, pursuant to state consumer protection laws. Through civil investigative demands, the State has obtained documents and information, and based upon this investigation, the State found serious issues with 23andMe’s data security procedures. The State has worked with the Debtors to reach agreed terms to address these issues, but to date, no resolution has been reached. At this time, the State has not filed a lawsuit against the Debtors; however, the State reserves the right to bring any police and regulatory action necessary to protect the health and safety of its citizens. Further, Indiana considers its investigative materials, including any responses to civil investigative demands, internal analyses, and related communications, to be confidential under state law and protected from disclosure. These materials were shared with select jurisdictions under the framework of a common interest agreement and remain subject to Indiana’s statutory and legal confidentiality protections. The State of Indiana considers its investigation to be ongoing and will take appropriate steps to preserve the integrity of its investigative tools, records, and legal authority.

#### **IV. REGULATORY AND SECURITY CONCERNS TO BE ADDRESSED IN ANY SALE OR TRANSFER OF CONSUMER DATA**

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<sup>21</sup> *How one coder used 23andMe to create a race wall around the web*, WIRED (Jul. 23, 2015), <https://www.wired.com/story/23andme-api-blocks-based-on-race-gender/> (noting the code’s creator, who was not affiliated with 23andMe, explained online that “Hasidic jews might like to bar access for Askenazi or Sephardic jews, or the NAACP might want to filter its prospective members”).

As the Debtors collect and maintain a large number and variety of sensitive data types, the State are relying on the Debtors' and buyers' assurances that there are sufficient Information Security and Privacy Programs in place to protect any or all of the information held or potentially transferred by the Debtors. The State has regulatory powers and duties to ensure that the personal information of its citizens is secure and safeguarded, and that its citizens, as consumers, are treated fairly. As such, the State reminds the proposed buyers that they must implement appropriate processes and procedures to comply with regulatory requirements, including for the State of Indiana, the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5 *et seq.*, and Indiana's genetic privacy statute, Ind. Code § 24-4-24 *et seq.* (effective May 6, 2025). Those processes and procedures would likely include: (1) implementing or complying with an Information Security Program that takes into account the size and complexity of the operations and activities of the company and the sensitivity of the stored information; (2) implementing or complying with a Privacy Program for the privacy of consumers including reasonable safeguards and consent and disclosure requirements; (3) requirements related to future incident and breach response and notification; (4) specific technical safeguards and controls such as requiring multi-factor authentication or equivalent enhanced authentication measures; and (5) maintaining customers' ability to require that their physical Genetic Material be destroyed and their data be deleted.

## **V. CONCLUSION**

The State of Indiana respectfully requests that, should the sale occur, the

proposed order of sale explicitly preserve the right of the Indiana Attorney General to enforce Indiana consumer protection and privacy laws as to any conduct occurring after the sale, including under the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5 *et seq.*, and Indiana's genetic privacy statute, Ind. Code § 24-4-24 *et seq.* (effective May 6, 2025).

Further, we request that no finding or approval in connection with the proposed sale be construed as a waiver, limitation, or adjudication of Indiana's ability to assert state law enforcement authority in a court of competent jurisdiction. Such clarity would be consistent with the approach adopted in similar cases and would help maintain proper boundaries between federal asset sale approval and future state enforcement discretion.

Date: June 12, 2025

Respectfully submitted,

By: /s/ Heather M. Crockett  
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### ***CERTIFICATE OF SERVICE***

I certify that a true and correct copy of the foregoing has been served via the Court's Electronic Filing System on all parties requesting notice in this proceeding on June 12, 2025.

/s/ Heather M. Crockett  
Heather M. Crockett